

MAINE STATE LEGISLATURE

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STATE OF MAINE
125TH LEGISLATURE
SECOND REGULAR SESSION



Summaries of bills, adopted amendments and laws enacted or finally passed

JOINT STANDING COMMITTEE ON JUDICIARY

June 2012

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STATE OF MAINE

125TH LEGISLATURE
SECOND REGULAR SESSION



LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* summarizes all LDs and adopted amendments and all laws enacted or finally passed during the Second Regular Session of the 125th Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by Legislative Document (LD) number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each LD title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. The appendices include a summary of relevant session statistics, an index of all bills by LD number and an index of enacted laws by law type and chapter number.

Final action on each LD is noted to the right of the LD title. The following describes the various final actions.

<i>CARRIED OVER</i>	<i>carried over to a subsequent session of the Legislature</i>
<i>CON RES XXX</i>	<i>chapter # of constitutional resolution passed by both houses</i>
<i>CONF CMTE UNABLE TO AGREE</i>	<i>Committee of Conference unable to agree; legislation died</i>
<i>DIED BETWEEN HOUSES</i>	<i>House & Senate disagreed; legislation died</i>
<i>DIED IN CONCURRENCE</i>	<i>defeated in each house, but on different motions; legislation died</i>
<i>DIED ON ADJOURNMENT</i>	<i>action incomplete when session ended; legislation died</i>
<i>EMERGENCY</i>	<i>enacted law takes effect sooner than 90 days after session adjournment</i>
<i>FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE</i>	<i>emergency failed to receive required 2/3 vote</i>
<i>FAILED, ENACTMENT or FINAL PASSAGE</i>	<i>failed to receive final majority vote</i>
<i>FAILED, MANDATE ENACTMENT</i>	<i>legislation proposing local mandate failed required 2/3 vote</i>
<i>HELD BY GOVERNOR</i>	<i>Governor has not signed; final disposition to be determined at subsequent session</i>
<i>LEAVE TO WITHDRAW</i>	<i>sponsor's request to withdraw legislation granted</i>
<i>NOT PROPERLY BEFORE THE BODY</i>	<i>ruled out of order by the presiding officer; legislation died</i>
<i>INDEF PP</i>	<i>indefinitely postponed; legislation died</i>
<i>ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X</i> ...	<i>ought-not-to-pass report accepted; legislation died</i>
<i>P&S XXX</i>	<i>chapter # of enacted private & special law</i>
<i>PUBLIC XXX</i>	<i>chapter # of enacted public Law</i>
<i>RESOLVE XXX</i>	<i>chapter # of finally passed resolve</i>
<i>VETO SUSTAINED</i>	<i>Legislature failed to override Governor's veto</i>

The effective date for non-emergency legislation enacted in the Second Regular Session of the 125th Legislature is Thursday, August 30, 2012. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

Joint Standing Committee on Judiciary

This bill is reported out by the Joint Standing Committee on Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph G. This bill incorporates recommendations of the majority of the Right To Know Advisory Committee.

This bill creates a public records exception for proposed legislation, reports and working papers of the Governor and the Governor's office that is parallel to the Legislature's public records exception in existing law. The proposed legislation, reports and working papers do not become public records until they are publicly distributed or until the adjournment of the legislative session for which the proposed legislation, reports and working papers are prepared.

Committee Amendment "A" (H-882)

This amendment is the majority report of the Joint Standing Committee on Judiciary. It replaces the bill. It provides a temporary public records exception for records relating to the deliberative process of the Governor for legislative proposals and budgeting proposals and requests.

"Records relating to the deliberative process of the Governor" is defined to mean all records containing predecisional advice, opinions, deliberations or recommendations created by the Governor or the internal staff of the Governor and maintained within the exclusive custody and control of the Governor or the internal staff of the Governor. The internal staff of the Governor consists of the chief of staff, legal counsel, director of policy and employees under their direct supervision. The records become public when the first of the following occurs:

1. The records are made available to any person or agency outside the internal staff of the Governor;
2. The records are publicly distributed in accordance with legislative rules;
3. Adjournment of the Legislature for which the records were prepared occurs; or
4. Six months from the creation of the records has passed.

This amendment provides that the public records exception for the records relating to the deliberative process of the Governor is repealed December 31, 2013.

Senate Amendment "A" To Committee Amendment "A" (S-531)

This amendment maintains the provisions of Committee Amendment "A" and repeals the public records exception that applies to legislative working papers and other records. It also adds an appropriations and allocations section.

This amendment was not adopted.

Senate Amendment "B" To Committee Amendment "A" (S-544)

This amendment provides an effective date of January 1, 2015, and removes repealing provisions inconsistent with that change.

This amendment was not adopted.

LD 1810

An Act To Implement Recommendations of the Committee To Review Issues Dealing with Regulatory Takings

INDEF PP

Sponsor(s)

Committee Report

Amendments Adopted

OTP-AM MAJ
OTP-AM MIN

Joint Standing Committee on Judiciary

This bill is reported out by the Joint Standing Committee on Judiciary pursuant to Resolve 2011, chapter 111, section 9. This bill incorporates the recommendations of the majority of the Committee to Review Issues Dealing with Regulatory Takings.

The purpose of this bill is to establish standards for relief when state regulation imposes an inordinate burden on an individual property owner, as well as efficient mechanisms for pursuit of such relief.

To eliminate any fiscal impact from the establishment of these new standards and mechanisms, they will apply prospectively: that is, only to burdens from regulations enacted in the future. The bill provides mechanisms designed to achieve fair results and to resolve disputes efficiently, including the ability, at the State's option, to grant variances, which is an option consistent with general land use principles; the encouragement of the use of informal dispute resolution avenues reducing and potentially eliminating any litigation costs; and, when regulatory impact on fair market value depends upon other regulatory avenues, the ability of a property owner to obtain a nonbinding identification of the uses the state will allow on the affected property.

Claims of diminution of fair market value based on speculative uses are precluded by the requirement that the property owner provide an appraisal reflecting a diminution of 50% or more in actual fair market value of the owner's entire parcel as well as by the limitation of relief to the reasonable investment-backed expectations of the owner.

Committee Amendment "A" (H-921)

This amendment is the majority report of the Joint Standing Committee on Judiciary. It replaces the bill.

The amendment provides enabling language for the establishment by the Legislature of a joint legislative committee created to review effectiveness and fairness of land use laws and rules. The committee is to be established by joint rule of the Legislature. Its duties include hearing and investigating complaints of property owners about land use laws and rules; reviewing requested information from relevant state agencies about any law or rule alleged to have resulted in more than a minor reduction in the economically beneficial or productive uses of land; receiving information provided by the Attorney General regarding each rule the committee has reviewed that was the subject of public comment suggesting either that the rule might result in a potential taking of real property under the Constitution of Maine or that a variance was necessary to avoid such a taking; and recommending legislation to adjust land use laws and rules. The selection of members is suggested to provide for representation from joint standing committees of the Legislature with jurisdiction over environment and natural resources matters, agriculture, conservation and forestry matters and judiciary matters.

The amendment repeals the existing land use mediation program, reinstates it in the Maine Revised Statutes, Title 1 and corrects cross-references to the program. It requires the Court Alternative Dispute Resolution Service to submit an annual report about land use mediations to the joint legislative committee created to review effectiveness and fairness of land use laws and rules. The Court Alternative Dispute Resolution Service must make available online brochures about the program and applications for landowner participation in the land use mediation program.

The amendment requires state agencies that administer land use laws to provide, when making regulatory decisions, information about the land use mediation program as well as the right to appeal the regulatory decisions. The special advocate appointed by the Secretary of State pursuant to Title 5, section 90-P must provide land use mediation program brochures to businesses that are pursuing permit applications with state agencies. State agencies that administer land use laws and the Court Alternative Dispute Resolution Service must ensure that information about the land use mediation program is available in an electronic format on agency publicly accessible websites.

The amendment also adds an appropriations and allocations section.

This amendment was not adopted.

Joint Standing Committee on Judiciary

Committee Amendment "B" (H-922)

This amendment is the minority report of the Joint Standing Committee on Judiciary.

This amendment replaces the bill, making changes by:

1. Adding a definition of "affiliate," which is used to prevent the dividing of property to circumvent the provision in the bill regarding measuring diminution of value against the entire parcel;
2. Adding a definition of "underlying governmental land use action," which is used to help determine ripeness of a claim;
3. Clarifying that a property owner must obtain a professional appraisal, and not simply an appraisal, as part of making a claim;
4. Clarifying the description of "reasonable investment-backed expectations" by adding a temporal reference found in Florida statute;
5. Clarifying that property cannot be divided to circumvent the provision in the bill regarding measuring diminution of value against the entire parcel and clarifying that an entire contiguous parcel's failure to meet the diminution threshold of 50% precludes recovery under this legislation;
6. Limiting recovery to either damages, capped at \$400,000, as established in the Maine Tort Claims Act, or a takings variance. Compensation for the entire fair market value of a parcel as an option for relief is eliminated; it is always an available avenue for the State to exercise if it chooses under the Constitution of Maine;
7. Adjusting tolling provisions to account for the inclusion of a mandatory mediation program and the opportunity for the Legislature to direct changes in the land use laws and rules that cause the diminution of property values;
8. Clarifying that municipalities are exempt from this legislation and are not subject to costs as a result of this legislation;
9. Rewriting the alternative dispute resolution section proposed in the bill in order to create a mandatory mediation program, which:
 - A. Requires that before a takings claim can be filed in court, a property owner must pursue relief under the land use mediation program, subject to enhanced requirements;
 - B. Requires that a property owner applying for relief under mandatory mediation must also include a professional appraisal indicating 50% or greater diminution in property value with the application. By applying for mediation, the property owner consents to grant the mediator and the State access to the property owner's land for purposes of resolving a dispute;
 - C. Describes ripeness for purposes of seeking mandatory mediation, requiring the property owner, before mediation, to apply for and be denied a land use unless a regulation on its face would clearly cause a 50% diminution in property value;
 - D. Limits recovery from speculative uses of the property;
 - E. Requires that abutting property owners be notified when a property owner initiates mandatory mediation;
 - F. Provides that as part of mediation the State must identify what land uses are permitted on the property in

Joint Standing Committee on Judiciary

question. The State may also present a written settlement offer as part of mediation that may include various proposals in order to reach a settlement agreement. This settlement offer may then later be used as a defense in the event a claim is filed in court;

G. Provides that the property owner and the State have up to one year to complete the mediation process;

H. Provides that any settlement agreement reached in mediation must be formalized in writing and be self-executing;

I. Specifies that only after a failed mediation is a property owner allowed to proceed to court and creates financial incentives for a property owner to accept a bona fide offer from the State during mediation;

J. Provides that, when mediation fails to produce a settlement, the property owner shall report the failure to produce a settlement to the Office of the Attorney General, who is required to report that information to the joint legislative committee created to review effectiveness and fairness of land use laws and rules. In order to give the committee time and opportunity to address the underlying land use laws and rules, the property owner must delay filing a claim in court until March 15th after the failed mediation is reported by the Attorney General to the committee; and

K. Provides flexibility to the courts in determining administrative fees for mandatory mediation;

10. Expanding the provisions about attorney's fees to include that either the State or a property owner could be liable for attorney's fees in the event that either party does not make a bona fide attempt at settlement during the mediation process;

11. Requiring that the judicial branch provide regular reports to the joint standing committee of the Legislature having jurisdiction over judiciary matters on the number of cases pursued in court under this legislation so that future Legislatures can assess the impact of this legislation on court dockets;

12. Enabling the establishment by the Legislature of a joint legislative committee created to review effectiveness and fairness of land use laws and rules. The committee must be established by joint rule of the Legislature. Its duties include hearing and investigating complaints of property owners about land use laws and rules, receiving information collected and cataloged by the Attorney General regarding land use mediations in which settlement was not reached and recommending legislation to adjust land use laws and rules;

13. Delaying the implementation of the new regulatory takings program by excluding land use regulations enacted prior to August 1, 2013; and

14. Adding an appropriations and allocations section.

This amendment was not adopted.

Senate Amendment "A" To Committee Amendment "B" (S-556)

This amendment removes the option of a takings variance as relief for a regulatory taking and limits the options available to the State in a written settlement offer as part of mediation.

This amendment was not adopted.

Senate Amendment "B" To Committee Amendment "B" (S-565)

Under Committee Amendment "B" the cause of action for a regulatory taking does not apply to regulations enacted prior to August 1, 2013. This amendment changes the date to August 1, 2014. This amendment also adds an effective date of January 1, 2014, to the provisions of the amendment establishing the land use mediation program

Joint Standing Committee on Judiciary

and regulatory fairness review. This amendment replaces the appropriations and allocations section.

This amendment was not adopted.

Under Committee Amendment "B" the cause of action for a regulatory taking does not apply to regulations enacted prior to August 1, 2013. This amendment changes the date to August 1, 2015. This amendment also adds an effective date of July 1, 2013 to the provisions of the amendment establishing the land use mediation program and regulatory fairness review. This amendment removes the appropriations and allocations section.

This amendment was not adopted.

LD 1824 An Act To Provide Immunity for Prescribing and Dispensing Intranasal Naloxone Kits ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	ONTP	

This bill provides immunity for health care professionals and persons who assist a person who is experiencing or likely to experience an opiate-related drug overdose with intranasal naloxone. This bill is a recommendation from the Substance Abuse Services Commission's work group convened pursuant to Resolve 2011, chapter 81 and is submitted by the Joint Standing Committee on Health and Human Services.

LD 1831 An Act To Allow Forfeiture of Maine Public Employees Retirement System Benefits for Persons Convicted of Certain Crimes PUBLIC 606

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
FOSSEL KATZ	OTP-AM	H-838

This bill permits a court to order the forfeiture of benefits of a public employee who is a member of the Maine Public Employees Retirement System if the member is convicted of a crime for which the penalties are equal to or greater than a Class C crime if the crime is committed in connection with the member's public office or public employment or if the member's position placed the member in a position to commit the crime.

The bill also provides that amounts credited to the account of a member of the retirement system are available to pay any court-ordered restitution for economic loss suffered by the State or a political subdivision of the State as the result of the crime.

Committee Amendment "A" (H-838)

This amendment replaces the bill but carries out the intent of the bill to give a court discretion to order the forfeiture of retirement benefits of a member of the Maine Public Employees Retirement System who commits a crime in connection with the member's public office or public employment or a crime the member's position placed the member in a position to commit.

Enacted Law Summary

Public Law 2011, chapter 606 gives a court discretion to order the forfeiture of retirement benefits of a member of the Maine Public Employees Retirement System, including the gubernatorial retirement system, the legislative